

1 December 4, 2020 11:05 a.m.

11:05AM 2 THE CLERK: Calling Criminal Number 20-00113-DKW,
11:05AM 3 United States of America versus Defendant (01) Wayne Miller.

11:05AM 4 This case has been called for a telephonic hearing on
11:05AM 5 a waiver of indictment, arraignment and plea of guilty to the
11:05AM 6 single count information as to defendant Wayne Miller.

11:05AM 7 Counsel, please make your appearances for the record.
11:05AM 8 Mr. Inciong and Mr. Mizono, can you please make your
11:06AM 9 appearances for the record?

11:06AM 10 MR. MIZONO: Yes, Tammy, good morning. This is Max
11:06AM 11 Mizono on behalf of Mr. Miller, he is present with us
11:06AM 12 telephonically. I was waiting for Mr. Inciong to go first, but
11:06AM 13 maybe he is off the call now.

11:06AM 14 THE CLERK: Mr. Inciong, can you hear us?

11:06AM 15 MR. INCIONG: I can. Can you hear me?

11:06AM 16 THE CLERK: Can you make your appearance on the
11:06AM 17 record?

11:06AM 18 MR. INCIONG: Okay, I did. I'm sorry, for some reason
11:06AM 19 it didn't go through. Good morning, Your Honor. This is Mark
11:06AM 20 Inciong on behalf of the United States along with Micah Smith
11:06AM 21 and Michael Nammar.

11:06AM 22 THE COURT: Mr. Inciong, Mr. Nammar and Mr. Smith,
11:06AM 23 good morning. Good morning to you, Mr. Miller, as well as to
11:06AM 24 Mr. Mizono who made the appearance on your behalf. Hopefully
11:06AM 25 all of you can hear me just fine.

11:06AM 1 MR. MIZONO: Yes, Your Honor.

11:07AM 2 MR. INCIONG: Yes, Your Honor.

11:07AM 3 THE COURT: We are here this morning because the
11:07AM 4 defendant as I understand it, Mr. Miller, wishes to do two
11:07AM 5 things: First, to waive indictment and to proceed by
11:07AM 6 information; and secondly, to plead guilty to the single count
11:07AM 7 that is set forth in the November 12, 2020 information, and he
11:07AM 8 wishes to do so pursuant to a plea agreement.

11:07AM 9 All parties and their counsel, as I understand it,
11:07AM 10 have agreed to proceed with this hearing this morning by
11:07AM 11 telephone. Before doing so, I would like to get a few things
11:07AM 12 on the record.

11:07AM 13 First of all, pursuant to Section 15002 of the CARES
11:07AM 14 Act, the Coronavirus, Aid, Relief, and Economic Security Act,
11:07AM 15 there are certain circumstances in which a defendant may
11:07AM 16 consent, after consultation with counsel, to proceed with a
11:07AM 17 change of plea hearing such as this one by telephone.

11:07AM 18 On November 12th of this year, in what has turned out
11:08AM 19 to be a series of orders, but most recently on November 12th,
11:08AM 20 the chief judge for this court found that certain change of
11:08AM 21 plea hearings, including this one, cannot be conducted in
11:08AM 22 person without seriously jeopardizing public health and safety.
11:08AM 23 And Judge Seabright made that finding pursuant to Section
11:08AM 24 15002, subsection (b)(2) of the CARES Act.

11:08AM 25 Mr. Miller, your counsel has advised that you consent

11:08AM 1 to proceed this morning by telephone, which is obviously why we
11:08AM 2 scheduled this hearing. I'd like to get that consent on the
11:08AM 3 record before we proceed any further.

11:08AM 4 So, Mr. Miller, have you consulted with your counsel,
11:08AM 5 Mr. Mizono, concerning whether or not to proceed this morning
11:08AM 6 with your change of plea hearing by telephone rather than
11:08AM 7 through an in-person appearance in court?

11:08AM 8 THE DEFENDANT: Yes, Your Honor.

11:08AM 9 THE COURT: And, Mr. Mizono, can you concur or do you
11:08AM 10 concur that such consultation with Mr. Miller has in fact
11:09AM 11 occurred?

11:09AM 12 MR. MIZONO: Yes, Your Honor. I spoke with him
11:09AM 13 several times prior to this hearing about his appearance
11:09AM 14 telephonically, and I understand he agrees to appear
11:09AM 15 telephonically.

11:09AM 16 THE COURT: All right. And, Mr. Miller, having so
11:09AM 17 consulted, do you consent to proceed this morning with your
11:09AM 18 change of plea hearing by telephone?

11:09AM 19 THE DEFENDANT: Yes, Your Honor.

11:09AM 20 THE COURT: Can you speak up? I did not hear your
11:09AM 21 response.

11:09AM 22 THE DEFENDANT: Yes, Your Honor.

11:09AM 23 THE COURT: All right. In addition, I find that this
11:09AM 24 change of plea hearing cannot be further delayed without
11:09AM 25 serious harm to the interest of justice. In particular, as we

11:09AM 1 have all come to know, unfortunately COVID-19 is an
11:09AM 2 international pandemic and has been since the early part of
11:09AM 3 2020 with no discernible end in sight. As mentioned, the chief
11:09AM 4 judge of this court has already found in a series of CARES Act
11:09AM 5 orders, with the most recent one being on November 12th, that
11:09AM 6 change of plea hearings, like this one, cannot proceed in
11:09AM 7 person without seriously jeopardizing public health and safety.

11:10AM 8 The defendant is, as I understand it, is on the
11:10AM 9 mainland. And in order to appear in person would have to
11:10AM 10 travel by plane to Honolulu. Doing so would subject not only
11:10AM 11 the defendant but any law enforcement escorts and others to
11:10AM 12 enhanced risk presented by the current pandemic and will also
11:10AM 13 require them to quarantine in order to comply with state law.
11:10AM 14 And that's, in my mind, neither practical nor sensible.

11:10AM 15 Moreover, the facility in which the defendant is
11:10AM 16 housed, as I understand it from the U.S. Attorney's Office,
11:10AM 17 does not have video conferencing capabilities. So the only
11:10AM 18 method that would allow us to proceed this morning is the
11:10AM 19 telephone, to which again all parties and their counsel
11:10AM 20 consent.

11:10AM 21 I note also that there is limited programming
11:10AM 22 available to pretrial detainees. And, as a result, until
11:10AM 23 Mr. Miller is put into the sentencing queue and is ultimately
11:10AM 24 sentenced, he will not be eligible for additional programming
11:10AM 25 that could result in a number of changes beneficial to him,

11:11AM 1 including the possibility of earlier release, and a lower
11:11AM 2 security classification.

11:11AM 3 And, finally, the Court finds that delay would
11:11AM 4 eventually result in a backlog of criminal matters, which is
11:11AM 5 not speculation because that is precisely what occurred earlier
11:11AM 6 this year when the same pandemic closed our courthouse all
11:11AM 7 together from roughly mid March to mid June.

11:11AM 8 Mr. Miller, before accepting either your waiver or
11:11AM 9 your plea this morning, there are a number of questions that I
11:11AM 10 need to ask you to ensure that your decisions are both knowing
11:11AM 11 and voluntary. If any of the questions that I'm about to ask
11:11AM 12 you are unclear for some reason or ambiguous to you, please
11:11AM 13 identify them -- that fact for me, and I will do my best to
11:11AM 14 provide clarification. Do you understand that, sir?

11:11AM 15 THE DEFENDANT: Yes, Your Honor.

11:11AM 16 THE COURT: Please, Ms. Kimura, would you swear the
11:11AM 17 defendant?

11:11AM 18 THE CLERK: Please raise your right hand.

11:11AM 19 (The defendant was sworn to answer truthfully.)

11:12AM 20 THE COURT: Mr. Miller, please understand that you
11:12AM 21 have taken an oath this morning to answer my questions
11:12AM 22 truthfully, and if you do anything other than that you could be
11:12AM 23 subjecting yourself to additional charges; do you understand
11:12AM 24 that?

11:12AM 25 THE DEFENDANT: Yes, Your Honor.

11:12AM 1 THE COURT: Please state your full name.

11:12AM 2 THE DEFENDANT: Wayne Miller.

11:12AM 3 THE COURT: How old are you, sir?

11:12AM 4 THE DEFENDANT: 37.

11:12AM 5 THE COURT: Could you turn that up a tad? Mr. Miller,

11:12AM 6 could you state your age again, I did not hear that.

11:12AM 7 THE DEFENDANT: 37.

11:12AM 8 THE COURT: I'm sorry, we are adjusting our volume at

11:12AM 9 this end. I still did not hear your response.

11:12AM 10 THE DEFENDANT: 37.

11:12AM 11 THE COURT: 37, okay. Thank you. What is the highest

11:12AM 12 level of education that you have achieved?

11:12AM 13 THE DEFENDANT: 12th.

11:12AM 14 THE COURT: Did you graduate from high school?

11:12AM 15 THE DEFENDANT: Yes, Your Honor.

11:12AM 16 THE COURT: Okay. And who is your most recent

11:12AM 17 employer?

11:12AM 18 THE DEFENDANT: I think it was Netflix.

11:13AM 19 THE COURT: Netflix?

11:13AM 20 THE DEFENDANT: Yes, Your Honor.

11:13AM 21 THE COURT: And what did you do for that company?

11:13AM 22 THE DEFENDANT: Driver.

11:13AM 23 THE COURT: You were a driver. Okay. As a high

11:13AM 24 school graduate, you understand, speak, and I assume you write

11:13AM 25 English all just fine; is that fair?

11:13AM 1 THE DEFENDANT: Yes, Your Honor.

11:13AM 2 THE COURT: And have you taken any type of drugs,
11:13AM 3 legal or illegal, within the past 48 hours?

11:13AM 4 THE DEFENDANT: No, Your Honor.

11:13AM 5 THE COURT: And have you consumed any alcohol, sir, in
11:13AM 6 the past 24 hours?

11:13AM 7 THE DEFENDANT: No, Your Honor.

11:13AM 8 THE COURT: And is it fair to say, Mr. Miller, that
11:13AM 9 you are both clean and sober and thinking clearly this morning?

11:13AM 10 THE DEFENDANT: Yes, Your Honor.

11:13AM 11 THE COURT: What is your understanding, Mr. Miller, of
11:13AM 12 the purpose of this morning's hearing?

11:13AM 13 THE DEFENDANT: Acceptance of plea, change of plea.

11:13AM 14 THE COURT: And is it also your intent to waive
11:13AM 15 indictment and proceed by information?

11:13AM 16 THE DEFENDANT: Yes, Your Honor.

11:13AM 17 THE COURT: And have you had enough time, sir, to
11:13AM 18 discuss these decisions whether or not to waive indictment and
11:14AM 19 whether or not to plead guilty as well as to discuss this case
11:14AM 20 generally with Mr. Mizono, your counsel?

11:14AM 21 THE DEFENDANT: Yes, Your Honor.

11:14AM 22 THE COURT: And are you satisfied with his
11:14AM 23 representation of you thus far in this case?

11:14AM 24 THE DEFENDANT: Yes, Your Honor.

11:14AM 25 THE COURT: Mr. Mizono, do you have any reason to

11:14AM 1 doubt Mr. Miller's capacity or competence to either waive
11:14AM 2 indictment or to enter a knowing and informed plea this
11:14AM 3 morning?

11:14AM 4 MR. MIZONO: No, Your Honor.

11:14AM 5 THE COURT: Mr. Miller, there is a single charge that
11:14AM 6 is set forth in the information. That count -- that Count 1
11:14AM 7 charges you with conspiring to violate the racketeering laws of
11:14AM 8 the United States in violation of Title 18 of the United States
11:14AM 9 Code, Section 1962.

11:14AM 10 Have you discussed this charge and the allegations
11:14AM 11 associated with this charge with counsel?

11:14AM 12 THE DEFENDANT: Yes, Your Honor.

11:14AM 13 THE COURT: And based on your reading and discussions,
11:14AM 14 are you confident, sir, that you understand the nature of the
11:14AM 15 charges that have been brought against you?

11:14AM 16 THE DEFENDANT: Yes, Your Honor.

11:15AM 17 THE COURT: Mr. Miller, do you understand the charges
11:15AM 18 that have been brought against you?

11:15AM 19 THE DEFENDANT: Yes, Your Honor.

11:15AM 20 THE COURT: Do you have any questions at all regarding
11:15AM 21 these charges?

11:15AM 22 THE DEFENDANT: No, Your Honor.

11:15AM 23 THE COURT: Do you understand, sir, that you do have
11:15AM 24 the constitutional right to be charged by a grand jury
11:15AM 25 indictment, but you can waive that right and consent to be

11:15AM 1 charged by an information that is filed by the U.S. Attorney?

11:15AM 2 THE DEFENDANT: Yes, Your Honor.

11:15AM 3 THE COURT: Do you understand further, sir, that

11:15AM 4 unless you waive indictment, you cannot be charged with a

11:15AM 5 felony offense, such as the Title 18 violation that you have

11:15AM 6 been charged with, unless the grand jury were to return an

11:15AM 7 indictment finding that there is probable cause to believe that

11:15AM 8 a federal crime has been committed and that you committed it?

11:15AM 9 THE DEFENDANT: Yes, sir.

11:15AM 10 THE COURT: I know you have likely discussed the grand

11:15AM 11 jury process with Mr. Mizono, but at the risk of some

11:15AM 12 redundancy I want to go over a little bit about that process

11:15AM 13 with you myself.

11:16AM 14 First of all, Mr. Miller, do you understand, sir, that

11:16AM 15 a grand jury is a body of at least 16 but not more than 23

11:16AM 16 impartial citizens from this local community?

11:16AM 17 THE DEFENDANT: Yes, Your Honor.

11:16AM 18 THE COURT: Do you further understand, sir, that if

11:16AM 19 you do not waive indictment, the United States could present

11:16AM 20 evidence of your conduct to that grand jury, which would then

11:16AM 21 vote in private to determine once again if there is probable

11:16AM 22 cause to believe that a federal crime has been committed and

11:16AM 23 that you committed it?

11:16AM 24 THE DEFENDANT: Yes, Your Honor.

11:16AM 25 THE COURT: Do you further understand, Mr. Miller,

11:16AM 1 that if at least 12 of those grand jurors vote to so find, they
11:16AM 2 would return what is known as an indictment against you; and on
11:16AM 3 the other hand, if at least 12 of the grand jurors do not so
11:16AM 4 find, they would not return an indictment against you? In
11:16AM 5 other words, the grand jury may or may not indict you based on
11:16AM 6 the information presented to it by the United States; do you
11:16AM 7 understand that?

11:16AM 8 THE DEFENDANT: Yes, Your Honor.

11:16AM 9 THE COURT: Do you further understand, sir, that if
11:16AM 10 you waive indictment by a grand jury, the information filed by
11:17AM 11 the U.S. Attorney in this case on November 12, 2020 will serve
11:17AM 12 exactly as if an indictment had issued?

11:17AM 13 THE DEFENDANT: Yes, Your Honor.

11:17AM 14 THE COURT: And have you discussed this process, this
11:17AM 15 grand jury process with counsel?

11:17AM 16 THE DEFENDANT: Yes, Your Honor.

11:17AM 17 THE COURT: And do you have any questions regarding
11:17AM 18 this process?

11:17AM 19 THE DEFENDANT: No, Your Honor.

11:17AM 20 THE COURT: And are you confident, sir, that you
11:17AM 21 understand the grand jury process?

11:17AM 22 THE DEFENDANT: Yes, Your Honor.

11:17AM 23 THE COURT: Is it still your intent, sir, to waive
11:17AM 24 indictment?

11:17AM 25 THE DEFENDANT: Yes, Your Honor.

11:17AM 1 THE COURT: Now, Mr. Miller, to accomplish that
11:17AM 2 waiver, there are a couple of things that I think you've
11:17AM 3 already done, one is to sign your plea agreement which
11:17AM 4 references your waiver, but you've also signed -- or at least
11:17AM 5 it looks like your signature that was affixed on a single page
11:17AM 6 waiver of an indictment form. Do you recall signing that
11:17AM 7 document?

11:17AM 8 THE DEFENDANT: Yes, Your Honor.

11:17AM 9 THE COURT: All right. And, Mr. Mizono, it looks like
11:17AM 10 you signed the same single page that your client signed with
11:17AM 11 respect to the waiver; is that also true?

11:17AM 12 MR. MIZONO: Yes, that's correct, Your Honor.

11:17AM 13 THE COURT: So the Court has also countersigned that
11:18AM 14 same one-paged document, I have dated it today's date,
11:18AM 15 December 4th of 2020. I'm handing it now to Ms. Kimura to
11:18AM 16 place on the docket in this matter later this morning once the
11:18AM 17 hearing is concluded. The Court finds then that Mr. Miller
11:18AM 18 knowingly and voluntarily waives indictment and consents to
11:18AM 19 proceed by information.

11:18AM 20 Mr. Miller, with respect to your plea, once again my
11:18AM 21 understanding is that you intend to plead guilty this morning
11:18AM 22 to the single count set forth in the information, I've already
11:18AM 23 summarized that count for you. Has anyone, sir, threatened,
11:18AM 24 forced, or coerced you into pleading guilty this morning?

11:18AM 25 THE DEFENDANT: No, Your Honor.

11:18AM 1 THE COURT: Has anyone to your knowledge threatened,
11:18AM 2 forced, or coerced someone close to you, meaning a close friend
11:18AM 3 or a relative, in order to get you to plead guilty?

11:18AM 4 THE DEFENDANT: No, Your Honor.

11:18AM 5 THE COURT: Has anyone made any promises to you other
11:18AM 6 than the promises that the government has made in its written
11:19AM 7 plea agreement with you in order to get you to plead guilty?

11:19AM 8 THE DEFENDANT: No, Your Honor.

11:19AM 9 THE COURT: Are you pleading guilty this morning,
11:19AM 10 Mr. Miller, because you are guilty of the conduct alleged in
11:19AM 11 Count 1?

11:19AM 12 THE DEFENDANT: Yes, Your Honor.

11:19AM 13 THE COURT: Mr. Inciong, what are the potential
11:19AM 14 penalties that Mr. Miller faces for pleading guilty to Count 1.

11:19AM 15 MR. INCIONG: Your Honor, the penalties that apply to
11:19AM 16 that particular count are as follows:

11:19AM 17 There is a maximum term of imprisonment of up to
11:19AM 18 20 years, along with a fine of up to \$250,000. There is also a
11:19AM 19 term of supervised release of up to three years that also
11:19AM 20 applies. And, finally, there is a \$100 mandatory special
11:19AM 21 assessment.

11:19AM 22 THE COURT: Is there a forfeiture component,
11:19AM 23 Mr. Inciong, to this particular defendant's plea?

11:19AM 24 MR. INCIONG: Generally, Your Honor, there is. There
11:19AM 25 is no specific forfeiture findings or stipulations at this

11:19AM 1 time. However, the plea agreement does call for forfeiture if
11:20AM 2 in fact it becomes applicable down the line.

11:20AM 3 THE COURT: Mr. Mizono, do you agree with the
11:20AM 4 potential penalties that your client faces for pleading guilty
11:20AM 5 to Count 1 as just described by AUSA Inciong?

11:20AM 6 MR. MIZONO: Yes, I agree.

11:20AM 7 THE COURT: Mr. Miller, do you, sir, understand the
11:20AM 8 potential penalties that you face for pleading guilty to Count
11:20AM 9 1?

11:20AM 10 THE DEFENDANT: Yes, Your Honor.

11:20AM 11 THE COURT: Mr. Miller, you have entered into a
11:20AM 12 written plea agreement with the United States; is that correct?

11:20AM 13 THE DEFENDANT: Yes, Your Honor.

11:20AM 14 THE COURT: Have you read that agreement in full?

11:20AM 15 THE DEFENDANT: Yes, Your Honor.

11:20AM 16 THE COURT: And have you had an opportunity to discuss
11:20AM 17 that agreement with counsel?

11:20AM 18 THE DEFENDANT: Yes, Your Honor.

11:20AM 19 THE COURT: Based on your review and discussions, are
11:20AM 20 you confident, sir, that you understand each of the terms of
11:20AM 21 your plea agreement with the government?

11:20AM 22 THE DEFENDANT: Yes, Your Honor.

11:20AM 23 THE COURT: Can you say that again, sir?

11:20AM 24 THE DEFENDANT: Yes, Your Honor.

11:20AM 25 THE COURT: And, Mr. Mizono, are you satisfied that

11:20AM 1 your client, Mr. Miller, understands the terms of his plea
11:20AM 2 agreement?

11:20AM 3 MR. MIZONO: Yes, Your Honor, I'm satisfied.

11:20AM 4 THE COURT: Mr. Miller, did you sign the plea
11:21AM 5 agreement, the 21-paged document on the final page, page 21,
11:21AM 6 with the execution date of November 10, 2020?

11:21AM 7 THE DEFENDANT: Yes, Your Honor.

11:21AM 8 THE COURT: Does the written plea agreement that you
11:21AM 9 signed reflect the entire agreement that you have with the
11:21AM 10 United States?

11:21AM 11 THE DEFENDANT: Yes, Your Honor.

11:21AM 12 THE COURT: Said similarly, did the government make
11:21AM 13 any verbal or oral promises to you that they did not put into
11:21AM 14 the written plea agreement?

11:21AM 15 THE DEFENDANT: No, Your Honor.

11:21AM 16 THE COURT: Okay. And do you understand, sir, that
11:21AM 17 the Court is not required to accept your plea agreement and
11:21AM 18 that I could reject it? I have made no decision regarding
11:21AM 19 that, but I could reject it after considering a presentence
11:21AM 20 investigation report that will be prepared after the conclusion
11:21AM 21 of this morning's hearing.

11:21AM 22 THE DEFENDANT: Yes, Your Honor.

11:21AM 23 THE COURT: Do you further understand, Mr. Miller,
11:21AM 24 that any stipulations in your plea agreement are stipulations
11:21AM 25 between you and the U.S. Attorney's Office, and that the Court

11:21AM 1 specifically is not bound by those stipulations?

11:22AM 2 THE DEFENDANT: Yes, Your Honor.

11:22AM 3 THE COURT: Mr. Inciong, would you then describe the
11:22AM 4 essential terms of the government's plea agreement with
11:22AM 5 Mr. Miller including any appellate waiver provisions?

11:22AM 6 MR. INCIONG: Yes, Your Honor. This plea agreement,
11:22AM 7 Your Honor, is being presented pursuant to Federal Rule of
11:22AM 8 Criminal Procedure 11(c)(1)(C). In that agreement the
11:22AM 9 defendant acknowledges that he has been charged in the
11:22AM 10 information with violating Title 18, United States Code,
11:22AM 11 Section 1962(d). The defendant fully understands the nature
11:22AM 12 and elements of this crime with which he has been charged.
11:22AM 13 Pursuant to the plea agreement, the defendant has
11:22AM 14 agreed to waive indictment and enter a voluntary plea of guilty
11:22AM 15 to the information which charges him with conspiring to violate
11:22AM 16 the racketeering laws of the United States, specifically, the
11:22AM 17 statute section I just mentioned, Title 18, United States Code,
11:22AM 18 Section 1962(c).

11:22AM 19 The defendant is aware that he would have the right
11:23AM 20 ordinarily to have this felony asserted against him by way of a
11:23AM 21 grand jury indictment. The defendant has waived this right and
11:23AM 22 has consented that the offense may be charged against him by
11:23AM 23 way of the information. In return, the government has agreed
11:23AM 24 to dismiss Criminal Complaint Number 19-01076-KSC as to the
11:23AM 25 defendant after sentencing.

11:23AM 1 In addition, the government agrees not to file any
11:23AM 2 additional charges against the defendant related to his
11:23AM 3 participation beginning in or about the year 2014 and
11:23AM 4 continuing up to in or about the fall of the year 2018 in the
11:23AM 5 racketeering enterprise described in the information.

11:23AM 6 The United States further agrees, pursuant to Federal
11:23AM 7 Rule of Criminal Procedure 11(c)(1)(C), that a sentence of no
11:23AM 8 more than 20 years of imprisonment, which is the maximum
11:23AM 9 according to the statute in this case, is the appropriate
11:24AM 10 disposition of the case. The parties do reserve their right
11:24AM 11 however to argue that a sentence of less than 20 years
11:24AM 12 imprisonment is appropriate at the time of sentencing if they
11:24AM 13 so wish.

11:24AM 14 The defendant is entering this plea because he is in
11:24AM 15 fact guilty of conspiring to violate the racketeering laws of
11:24AM 16 the United States as charged in the information and agrees that
11:24AM 17 his plea is voluntary and not the result of any force or
11:24AM 18 threat.

11:24AM 19 There are a number of factual stipulations in the
11:24AM 20 agreement at page 5 continuing to page 6, 7, 8 -- concluding at
11:24AM 21 page 8. There are a number of sentencing stipulations as well.
11:24AM 22 The parties do agree that the charge to which the defendant is
11:24AM 23 pleading guilty adequately reflects the seriousness of the
11:24AM 24 actual offense behavior and that accepting this plea agreement
11:24AM 25 would not undermine any statutory purposes of sentencing.

11:25AM 1 The parties further stipulate, pursuant to Rule 32.1
11:25AM 2 of the local rules of the United States District Court for the
11:25AM 3 District of Hawaii and Section 6B1.4 of the Sentencing
11:25AM 4 Guidelines that as of the date of this agreement, it is
11:25AM 5 expected that the defendant will enter a guilty plea prior to
11:25AM 6 the commencement of trial, will truthfully admit his
11:25AM 7 involvement in the offense and related conduct and will not
11:25AM 8 engage in conduct that is inconsistent with such acceptance of
11:25AM 9 responsibility.

11:25AM 10 If all these events occur and the defendant's
11:25AM 11 acceptance of responsibility continues through the date of
11:25AM 12 sentencing, a downward adjustment of minus two levels for
11:25AM 13 acceptance of responsibility would be appropriate, according to
11:25AM 14 Section 3E1.1(a) of the Sentencing Guidelines as well as
11:25AM 15 Application Note 3.

11:25AM 16 The United States Attorney further agrees that the
11:25AM 17 defendant's agreement herein to enter into a guilty plea
11:26AM 18 constitutes notice of intent to plead guilty in a timely manner
11:26AM 19 so as to permit the government to avoid preparing for trial as
11:26AM 20 to this defendant. Accordingly, the United States Attorney
11:26AM 21 anticipates moving in the government's sentencing statement for
11:26AM 22 a one-level reduction in sentencing offense level pursuant to
11:26AM 23 Guideline Section 3E1.1 subparagraph B, subparagraph 2, if the
11:26AM 24 defendant is otherwise eligible.

11:26AM 25 The defendant understands, however, that

11:26AM 1 notwithstanding this present intention and still within the
11:26AM 2 terms of this plea agreement, the prosecution reserves the
11:26AM 3 right to argue to the contrary, in the event that new
11:26AM 4 information is received related to those issues and/or to call
11:26AM 5 and examine witnesses on those issues, if either the U.S.
11:26AM 6 Probation Office finds to the contrary of the prosecution's
11:26AM 7 intentions or this Court requests evidence to be presented on
11:26AM 8 those issues.

11:26AM 9 The parties also agree and understand that
11:27AM 10 notwithstanding the parties' agreement herein, this Court is
11:27AM 11 not bound by any stipulation entered into by the parties, but
11:27AM 12 will be the final determiner of any facts relevant to
11:27AM 13 sentencing with the aid of a presentence report. The parties
11:27AM 14 understand that the Court's rejection of any stipulation
11:27AM 15 between the parties does not constitute a refusal to accept the
11:27AM 16 plea agreement, since the Court is expressly not bound by
11:27AM 17 stipulations between the parties.

11:27AM 18 The parties further agree and understand, however,
11:27AM 19 that if the Court accepts the plea agreement, the Court would
11:27AM 20 be bound to the parties' agreement pursuant to Rule 11(c)(1)(C)
11:27AM 21 of the Federal Rules of Criminal Procedure, that a sentence of
11:27AM 22 not more than 20 years of imprisonment is the appropriate
11:27AM 23 disposition in this case.

11:27AM 24 Your Honor, the parties represent that as of today's
11:27AM 25 date there are no material facts in dispute. The defendant is

11:27AM 1 aware that typically he would have the right to appeal his
11:28AM 2 conviction and the sentence imposed. However, pursuant to the
11:28AM 3 terms of this plea agreement, Mr. Miller is knowingly and
11:28AM 4 voluntarily waiving his right to appeal except in two limited
11:28AM 5 circumstances:

11:28AM 6 First, if the Court were to sentence the defendant to
11:28AM 7 a range above and beyond what is found to be the applicable
11:28AM 8 guideline range by the Court, the defendant would have the
11:28AM 9 right to appeal that portion of the sentence which is above and
11:28AM 10 beyond the applicable guideline range.

11:28AM 11 The defendant also is waiving his right to challenge
11:28AM 12 his conviction by collateral attack, including any brought
11:28AM 13 under Title 28, United States Code, Section 2255. However,
11:28AM 14 with the exceptions that I just noted, number one being that if
11:28AM 15 he is sentenced above and beyond the guideline range that is
11:28AM 16 found to be applicable to the Court; secondly, he would also
11:29AM 17 retain his right to collaterally attack his conviction if he
11:29AM 18 believes he has a legitimate claim of ineffective assistance of
11:29AM 19 counsel. The prosecution retains its right to appeal the
11:29AM 20 sentence in a manner in this case under any circumstances.

11:29AM 21 There are a number of financial disclosures which are
11:29AM 22 required of the defendant pursuant to this plea agreement,
11:29AM 23 including the obligation to disclose any assets to the U.S.
11:29AM 24 Probation Office as well as to authorize the United States
11:29AM 25 Attorney's Office to obtain his credit report.

11:29AM 1 More specifically, the defendant agrees to notify the
11:29AM 2 Financial Litigation Unit of the U.S. Attorney's Office before
11:29AM 3 making any transfer as any interest in property with a value
11:29AM 4 exceeding \$1,000 owned directly or indirectly, individually or
11:29AM 5 jointly, by the defendant, including any interest held or owned
11:29AM 6 under any name, including trusts, partnerships, and
11:30AM 7 corporations.

11:30AM 8 The defendant understands that this Court, in imposing
11:30AM 9 his sentence, will consider the provisions of the Sentencing
11:30AM 10 Guidelines, but understands there is no promise or guarantee as
11:30AM 11 to the applicability or nonapplicability of those guidelines.

11:30AM 12 The defendant likewise understands that this agreement
11:30AM 13 will not be accepted or rejected by the Court until it has had
11:30AM 14 an opportunity to review and consider the presentence report.
11:30AM 15 The defendant also understands that the Court will not accept
11:30AM 16 this plea agreement unless the Court determines that the charge
11:30AM 17 adequately reflects the seriousness of the actual offense
11:30AM 18 behavior and that accepting the plea agreement would not
11:30AM 19 undermine any statutory purposes of sentencing.

11:30AM 20 By entering this plea agreement, the defendant is
11:30AM 21 waiving a number of important trial rights, both constitutional
11:30AM 22 and otherwise, including the right to have a jury of his peers
11:31AM 23 determine his fate, including the right to choose whether or
11:31AM 24 not to testify at that trial.

11:31AM 25 The defendant understands that by pleading guilty he

11:31AM 1 is waiving all of these rights, and those rights have been
11:31AM 2 explained to him along with the consequences by his counsel.

11:31AM 3 In regard to use of plea statements, if after signing
11:31AM 4 this plea agreement the defendant decides not to plead guilty,
11:31AM 5 as provided herein, or pleads guilty or subsequently makes a
11:31AM 6 motion before this Court to withdraw his guilty plea, and the
11:31AM 7 Court grants that motion, the defendant agrees that any
11:31AM 8 admission of guilt that he makes by signing this agreement or
11:31AM 9 that he makes while pleading guilty today in his allocution, as
11:31AM 10 set forth in this plea agreement, may be used against him in
11:31AM 11 his subsequent trial if the defendant later proceeds to trial.

11:31AM 12 Pursuant to this plea agreement, the defendant is
11:31AM 13 knowingly, voluntarily, and intelligently waiving any
11:31AM 14 protections afforded by Rule 11(f) of the Federal Rules of
11:32AM 15 Criminal Procedure, as well as Rule 410 of the Federal Rules of
11:32AM 16 Evidence regarding the use of statements made in this agreement
11:32AM 17 or during the course of pleading guilty when and if the plea of
11:32AM 18 guilty is later withdrawn. The only exception to this
11:32AM 19 paragraph is where the defendant fully complies with this
11:32AM 20 agreement but the Court nonetheless rejects it. Under those
11:32AM 21 circumstances, the United States may not use those statements
11:32AM 22 of defendant for any purpose.

11:32AM 23 The defendant also understands that the prosecution
11:32AM 24 will apprise the Court and the U.S. Probation Office the
11:32AM 25 nature, scope, and extent of the defendant's conduct regarding

11:32AM 1 the charges against him, any related matters, as well as any
11:32AM 2 matters in aggravation or mitigation which are relevant to
11:32AM 3 sentencing.

11:32AM 4 There is a cooperation provision as part of this plea
11:32AM 5 agreement. The defendant agrees that he will fully cooperate
11:32AM 6 with the United States, including agreeing to testify
11:32AM 7 truthfully at any and all trials, hearings, or other
11:33AM 8 proceedings in which the prosecution requests him to testify.
11:33AM 9 That is including but not limited to grand jury proceedings,
11:33AM 10 trial proceedings involving codefendants and others charged
11:33AM 11 later in the investigation, sentencing hearings, and any
11:33AM 12 related civil proceeding.

11:33AM 13 The defendant understands that pursuant to this
11:33AM 14 cooperation provision, if it is determined by the
11:33AM 15 U.S. Attorney's Office that he has provided substantial
11:33AM 16 assistance, the prosecution may move the Court to depart from
11:33AM 17 the Sentencing Guidelines on the grounds that the defendant has
11:33AM 18 provided substantial assistance to authorities in the
11:33AM 19 investigation or prosecution of another person who has
11:33AM 20 committed an offense. That motion would be made pursuant to
11:33AM 21 either guideline section 5K1.1 and/or Rule 35(b) of the Federal
11:33AM 22 Rules of Criminal Procedure. The defendant understands,
11:33AM 23 however, that the decision as to whether to make such a request
11:33AM 24 or motion lies entirely within the discretion of the
11:34AM 25 prosecution. And this agreement does not require the

11:34AM 1 prosecution to make such a motion.

11:34AM 2 The defendant and his attorney acknowledges that apart
11:34AM 3 from any written proffer agreement, no threats, promises,
11:34AM 4 agreements or conditions have been entered into by the parties
11:34AM 5 other than those set forth in this plea agreement to induce the
11:34AM 6 defendant to plead guilty. Apart from any written proffer
11:34AM 7 agreement, this agreement supersedes all prior promises,
11:34AM 8 agreements, or conditions between the parties.

11:34AM 9 To become effective, this agreement must be signed by
11:34AM 10 all signatories, and that has been done in this case, Your
11:34AM 11 Honor, as reflected on page 21 of the plea agreement. That
11:34AM 12 summarizes the terms of our agreement, Your Honor.

11:34AM 13 THE COURT: Mr. Mizono, do you agree that the
11:34AM 14 U.S. Attorney's Office through Mr. Inciong have described the
11:34AM 15 essential terms of your client's plea agreement with the United
11:34AM 16 States?

11:34AM 17 MR. MIZONO: Yes, Your Honor.

11:35AM 18 THE COURT: And, Mr. Miller, there are a number of
11:35AM 19 important provisions of your plea agreement that Mr. Inciong
11:35AM 20 has just described. There is one in particular that I always
11:35AM 21 like to call out to a defendant's attention. It is what we
11:35AM 22 sometimes refer to as the appellate waiver provision;
11:35AM 23 Mr. Inciong described it accurately. It is set forth in your
11:35AM 24 particular agreement at paragraph 13. What that particular
11:35AM 25 paragraph says, Mr. Miller, is that by virtue of entering into

11:35AM 1 this plea agreement with the United States, you are agreeing to
11:35AM 2 give up or waive all of your rights to appeal or to
11:35AM 3 collaterally attack the Court's judgment and sentence in this
11:35AM 4 case, and you agree to do so including all legally waivable
11:35AM 5 claims except in the two limited circumstances that Mr. Inciong
11:35AM 6 accurately described. Those being, first, the alleged
11:35AM 7 ineffective assistance of counsel, if you believe that you were
11:35AM 8 provided such assistance. And, secondly, to the extent that
11:36AM 9 the Court sentences you to something above what the applicable
11:36AM 10 guideline range calls for, you retain your right to challenge
11:36AM 11 only that portion above the applicable guideline range, and you
11:36AM 12 may do so either by direct appeal or by collateral attack.

11:36AM 13 Except in those two limited circumstances, this plea
11:36AM 14 agreement says you are agreeing or waiving all of your other
11:36AM 15 rights to challenge the Court's judgment and sentence; do you
11:36AM 16 understand that, sir?

11:36AM 17 THE DEFENDANT: Yes, Your Honor.

11:36AM 18 THE COURT: And by virtue of entering into this plea
11:36AM 19 agreement, you would also be giving up a number of important
11:36AM 20 trial and trial related rights. Those are largely described in
11:36AM 21 your particular agreement at paragraphs 17 and 18, so I know
11:36AM 22 you've gone over those, both through reading yourself and also
11:36AM 23 with counsel, based on your statements. However, I'd like to
11:36AM 24 go over those with you myself now.

11:36AM 25 First of all, Mr. Miller, do you understand that under

11:36AM 1 the constitution and laws of the United States you have the
11:36AM 2 right not to plead guilty and to proceed to a trial, including
11:36AM 3 a trial by jury, on the charges that have been brought against
11:37AM 4 you?

11:37AM 5 THE DEFENDANT: Yes, Your Honor.

11:37AM 6 THE COURT: Do you understand, sir, that if you
11:37AM 7 proceed to trial you would be presumed innocent, which means
11:37AM 8 that the government would have the burden of proving your guilt
11:37AM 9 to a jury beyond a reasonable doubt, and that at no time would
11:37AM 10 you have the burden of proving that you are not guilty?

11:37AM 11 THE DEFENDANT: Yes, Your Honor.

11:37AM 12 THE COURT: Do you further understand, Mr. Miller,
11:37AM 13 that if you were to proceed to trial, in order to be found
11:37AM 14 guilty at that trial, a jury of 12 persons from this local
11:37AM 15 community would have to find your guilt not only beyond a
11:37AM 16 reasonable doubt, but they would also have to do so
11:37AM 17 unanimously?

11:37AM 18 THE DEFENDANT: Yes, Your Honor.

11:37AM 19 THE COURT: Do you understand, Mr. Miller, that at all
11:37AM 20 stages of the prosecution, which includes trial, you have the
11:37AM 21 right to the assistance of counsel, as you do here this
11:37AM 22 morning, and if at any point in time you could not afford
11:37AM 23 counsel, one would be appointed for you by the Court at no cost
11:37AM 24 to you?

11:37AM 25 THE DEFENDANT: Yes, Your Honor.

11:37AM 1 THE COURT: Do you understand further that at any
11:37AM 2 trial you would have the right to see and to hear all of the
11:37AM 3 government's evidence and witnesses and to have those witnesses
11:38AM 4 questioned by your own attorney?

11:38AM 5 THE DEFENDANT: Yes, Your Honor.

11:38AM 6 THE COURT: Do you further understand, Mr. Miller,
11:38AM 7 that at any trial you could object to any of the evidence
11:38AM 8 offered by the United States and you could present evidence of
11:38AM 9 your own in your case in chief, including through witness
11:38AM 10 testimony that is compelled through the Court's subpoena power,
11:38AM 11 if that were necessary?

11:38AM 12 THE DEFENDANT: Yes, Your Honor.

11:38AM 13 THE COURT: Do you understand further, Mr. Miller,
11:38AM 14 that you would have the right to testify on your own behalf, if
11:38AM 15 there were a trial, and of course that's if and only if you
11:38AM 16 chose to do so; and if you chose not to, no inference or
11:38AM 17 suggestion of your guilt could be drawn by the jury by the fact
11:38AM 18 that you chose not to testify?

11:38AM 19 THE DEFENDANT: Yes, Your Honor.

11:38AM 20 THE COURT: Do you understand, Mr. Miller, that by
11:38AM 21 entering a plea of guilty this morning, and if I were to accept
11:38AM 22 that plea, there will be no trial and you will have given up
11:38AM 23 each of these trial related rights that I just mentioned?

11:38AM 24 THE DEFENDANT: Yes, Your Honor.

11:38AM 25 THE COURT: Do you also understand, Mr. Miller, that

11:38AM 1 in order to proceed with your guilty plea, you will also need

11:38AM 2 to give up or waive your right not to incriminate yourself?

11:39AM 3 And the reason for that is, I'm about to ask you a few

11:39AM 4 questions about what you did that makes you guilty of Count 1,

11:39AM 5 and those questions will need to be answered.

11:39AM 6 THE DEFENDANT: Yes, Your Honor.

11:39AM 7 THE COURT: Do you have any questions, sir, regarding
11:39AM 8 these rights that I've just outlined?

11:39AM 9 THE DEFENDANT: No, Your Honor.

11:39AM 10 THE COURT: And knowing these rights, Mr. Miller, do
11:39AM 11 you still wish to proceed with your plea?

11:39AM 12 THE DEFENDANT: Yes, Your Honor.

11:39AM 13 THE COURT: And you are a United States citizen; is
11:39AM 14 that correct?

11:39AM 15 THE DEFENDANT: Yes, Your Honor.

11:39AM 16 THE COURT: As a United States citizen, you need to
11:39AM 17 understand that the charge that has been brought against you
11:39AM 18 and that you are prepared to plead guilty to is considered a
11:39AM 19 felony offense. If your plea is accepted and you are adjudged
11:39AM 20 guilty of this offense, the adjudication by the Court could
11:39AM 21 deprive you of what many consider to be valuable civil rights.
11:39AM 22 And those civil rights include the right to vote, the right to
11:39AM 23 hold public office, the right to sit on a jury, as well as the
11:39AM 24 right to possess or bear a firearm. Do you understand that?

11:39AM 25 THE DEFENDANT: Yes, Your Honor.

11:39AM 1 THE COURT: With respect to sentencing, Mr. Miller,
11:39AM 2 United States law establishes detailed Sentencing Guidelines
11:40AM 3 that specify and provide guidelines and guidance to the Court
11:40AM 4 and to the parties regarding the appropriate sentence for those
11:40AM 5 who are convicted of, which includes those who plead guilty to
11:40AM 6 federal crimes. The sentencing judge in this case, most likely
11:40AM 7 myself, must consider those guidelines and additionally must
11:40AM 8 consider the sentencing factors that are set forth at Title 18
11:40AM 9 of the United States Code, Section 3553(a), what we sometimes
11:40AM 10 shorthand refer to as the Section 3553(a) factors.

11:40AM 11 Although the guidelines must be considered by the
11:40AM 12 sentencing judge, the guidelines are perhaps what the name
11:40AM 13 might imply to you and others. They are guidelines which means
11:40AM 14 they are advisory on this Court only. Do you understand that?

11:40AM 15 THE DEFENDANT: Yes, Your Honor.

11:40AM 16 THE COURT: Have you discussed with Mr. Mizono how the
11:40AM 17 Sentencing Guidelines might apply to your case?

11:40AM 18 THE DEFENDANT: Yes, Your Honor.

11:40AM 19 THE COURT: And do you understand, sir, that the
11:40AM 20 Court, as I sit here today, cannot with precision determine how
11:41AM 21 the Sentencing Guidelines apply to your case? I will not be
11:41AM 22 able to do that until after a presentence investigation and
11:41AM 23 investigation report have both been completed. That will not
11:41AM 24 happen until after this morning's hearing and after both
11:41AM 25 Mr. Mizono and Mr. Inciong have the opportunity to provide the

11:41AM 1 Court with any comments on or objections to the contents of
11:41AM 2 that report.

11:41AM 3 THE DEFENDANT: Yes, Your Honor.

11:41AM 4 THE COURT: Do you understand further, Mr. Miller,
11:41AM 5 that after the Court is able to determine how the guidelines
11:41AM 6 apply to your case, and those guidelines are considered along
11:41AM 7 with the Section 3553(a) sentencing factors I mentioned a
11:41AM 8 minute ago, that the Court could impose a sentence that is
11:41AM 9 either more or less severe than what the guidelines call for?

11:41AM 10 THE DEFENDANT: Yes, Your Honor.

11:41AM 11 THE COURT: Do you understand that if a sentence is
11:41AM 12 imposed that is more severe than what you expect or more severe
11:41AM 13 than what the guidelines call for, you will still be bound by
11:41AM 14 both your plea as well as your plea agreement and will have no
11:42AM 15 right to withdraw from either on that basis?

11:42AM 16 THE DEFENDANT: Yes, Your Honor.

11:42AM 17 THE COURT: Do you understand further, Mr. Miller,
11:42AM 18 that despite any discussions you may have had with Mr. Mizono,
11:42AM 19 with Mr. Inciong, or with anyone else regarding the type or the
11:42AM 20 duration of the sentence you are likely to receive, or
11:42AM 21 regarding any sentencing recommendation that they may wish to
11:42AM 22 provide to the Court, I am not bound by those discussions nor
11:42AM 23 am I bound by any recommendations provided to me regarding
11:42AM 24 sentencing, and I could impose a sentence more severe than what
11:42AM 25 you expect up to the maximum permitted by law?

11:42AM 1 THE DEFENDANT: Yes, Your Honor.

11:42AM 2 THE COURT: Mr. Miller, has anyone made any promises
11:42AM 3 to you regarding what your sentence will be?

11:42AM 4 THE DEFENDANT: No, Your Honor.

11:42AM 5 THE COURT: Do you understand that at the time of
11:42AM 6 sentencing there is no limitation on the information that I can
11:42AM 7 consider regarding your background, your character, and your
11:42AM 8 conduct except that the information that I use must be
11:42AM 9 sufficiently reliable?

11:42AM 10 THE DEFENDANT: Yes, Your Honor.

11:42AM 11 THE COURT: Do you understand, sir, that if a term of
11:42AM 12 imprisonment is imposed as part of your sentence, a term of
11:43AM 13 what we call supervised release will follow, at least almost
11:43AM 14 certainly it will follow, and if you were to violate any of the
11:43AM 15 conditions of that supervised release additional prison time
11:43AM 16 could be imposed?

11:43AM 17 THE DEFENDANT: Yes, Your Honor.

11:43AM 18 THE COURT: Do you further understand, sir, that in
11:43AM 19 the federal system parole has been abolished; and as a result,
11:43AM 20 if a term of imprisonment is imposed as part of your sentence,
11:43AM 21 you will not be released early on parole?

11:43AM 22 THE DEFENDANT: Yes, Your Honor.

11:43AM 23 THE COURT: Do you also understand, Mr. Miller, that
11:43AM 24 as part of any sentence in this case, the Court could order you
11:43AM 25 to pay a fine as well as a special assessment?

11:43AM 1 THE DEFENDANT: Yes, Your Honor.

11:43AM 2 THE COURT: And the Court could also order you to
11:43AM 3 forfeit certain property to the government?

11:43AM 4 THE DEFENDANT: Yes, Your Honor.

11:43AM 5 THE COURT: Okay. So, Mr. Miller, we have reached the
11:43AM 6 point in this morning's proceedings that I alluded to a few
11:43AM 7 minutes ago when we talked about the need to waive your right
11:43AM 8 not to incriminate yourself. I need to be sure that you
11:43AM 9 committed the crime that you have been charged with in Count 1
11:43AM 10 of the information, and the first step in that process is to
11:44AM 11 ask AUSA Inciong to set forth the elements of that offense.

11:44AM 12 MR. INCIONG: Yes, Your Honor. For the charge that is
11:44AM 13 charged in the information to which defendant is entering his
11:44AM 14 guilty plea, conspiring to violate the racketeering laws of the
11:44AM 15 United States, there are three elements that the United States
11:44AM 16 must prove beyond a reasonable doubt:

11:44AM 17 First, that beginning in or around the late 1990s,
11:44AM 18 continuing up to and including June of this year 2020, there
11:44AM 19 was an agreement between Mr. Miller and at least one other
11:44AM 20 person to commit at least one crime as charged in the
11:44AM 21 information, again conspiring to violate the racketeering laws
11:44AM 22 of the United States.

11:44AM 23 Secondly, the defendant became a member of the
11:44AM 24 conspiracy knowing of at least one of its objects and intending
11:44AM 25 to help accomplish it.

11:44AM 1 Thirdly, that one of the members of the conspiracy
11:44AM 2 performed at least one overt act for the purpose of carrying
11:45AM 3 out the conspiracy.

11:45AM 4 Now in regards to the object of the conspiracy, in
11:45AM 5 this case, the specific object was to participate in the
11:45AM 6 affairs of an association in fact, as defined in Title 18,
11:45AM 7 United States Code, Section 1962(c). There are four elements
11:45AM 8 the United States would be required to prove as part of that
11:45AM 9 object.

11:45AM 10 First, that there was an ongoing enterprise with some
11:45AM 11 sort of formal or informal framework for carrying out its
11:45AM 12 objectives consisting of a group of persons associated together
11:45AM 13 for a common purpose of engaging in a course of conduct.

11:45AM 14 Secondly, that the defendant was employed by or
11:45AM 15 associated with that enterprise.

11:45AM 16 Third, that the defendant participated directly or
11:45AM 17 indirectly in the conduct or the affairs of the enterprise
11:45AM 18 through a pattern of racketeering activity or the collection of
11:46AM 19 unlawful debt.

11:46AM 20 Finally, fourth, that the enterprise engaged in or its
11:46AM 21 activities in some way affected commerce between one state and
11:46AM 22 another state or between the United States and a foreign
11:46AM 23 country.

11:46AM 24 Those are the required elements that the United States
11:46AM 25 would need to prove beyond a reasonable doubt, Your Honor.

11:46AM 1 THE COURT: Mr. Mizono, do you have any disagreement
11:46AM 2 with Mr. Inciong's description of the elements of Count 1?

11:46AM 3 MR. MIZONO: I do not, Your Honor.

11:46AM 4 THE COURT: Then I'll turn back to Mr. Inciong to set
11:46AM 5 forth the evidence that the government would offer in this case
11:46AM 6 if it were to proceed to trial.

11:46AM 7 MR. INCIONG: Thank you, Your Honor. If this case
11:46AM 8 proceeded to trial the United States would present evidence to
11:46AM 9 show the following:

11:46AM 10 That beginning at least in or around the year 2014,
11:46AM 11 Wayne Miller, the defendant and others, known and unknown, were
11:46AM 12 members and associates of the Miske Enterprise. Members and
11:47AM 13 associates of the Miske Enterprise operated principally under
11:47AM 14 the direction and protection of Michael J. Miske, Jr. who used
11:47AM 15 his power over members and associates of the Miske Enterprise,
11:47AM 16 his reputation for violence in the community and the various
11:47AM 17 corporate entities under his control to enrich the members and
11:47AM 18 associates of the Miske Enterprise as well as to protect their
11:47AM 19 criminal activity.

11:47AM 20 The evidence would show that the Miske Enterprise,
11:47AM 21 including its leadership, membership, and associates
11:47AM 22 constituted an enterprise, as that term is defined by Title 18,
11:47AM 23 United States Code, Section 1961, subparagraph 4, that is a
11:47AM 24 group of individuals and entities associated in fact.

11:47AM 25 The evidence would show that the Miske Enterprise was

11:47AM 1 engaged in and its activities affected interstate and foreign
11:47AM 2 commerce. This was done in a number of ways, Your Honor, and
11:48AM 3 some will be referenced which I will elaborate on later.

11:48AM 4 For example, cocaine was trafficked by Mr. Miller as
11:48AM 5 part of the enterprise. Cocaine originates only in South
11:48AM 6 America and this would have had to affect foreign commerce.
11:48AM 7 Firearms are routinely obtained and possessed in furtherance of
11:48AM 8 the enterprise. Those firearms were manufactured outside the
11:48AM 9 State of Hawaii and this would have affected interstate
11:48AM 10 commerce.

11:48AM 11 Likewise, there were interstate communications using
11:48AM 12 telecommunication devices and messaging services that would
11:48AM 13 have traveled across state lines, thus affecting interstate
11:48AM 14 commerce. GPS, or global positioning trackers were used by
11:48AM 15 Mr. Miller and other members of the enterprise. Those likewise
11:48AM 16 used satellite beacons and signals that would have affected
11:49AM 17 interstate commerce. Those are just some of the ways
11:49AM 18 interstate commerce was affected.

11:49AM 19 The evidence would show that the Miske Enterprise
11:49AM 20 operated within the District of Hawaii and elsewhere and
11:49AM 21 constituted an ongoing organization whose members and
11:49AM 22 associates functioned as a continuing unit for a common purpose
11:49AM 23 of achieving the objectives of the Miske Enterprise.

11:49AM 24 The evidence would further show that beginning at
11:49AM 25 least in or about 2014 Mr. Miller and others, known and

11:49AM 1 unknown, were persons employed by and associated with the Miske
11:49AM 2 Enterprise, that those members willfully and knowingly
11:49AM 3 combined, conspired, confederated and agreed together and with
11:49AM 4 each other to violate the racketeering laws of the United
11:49AM 5 States. That is, to conduct and participate, directly and
11:49AM 6 indirectly, in the conduct of the affairs of the Miske
11:49AM 7 Enterprise through a pattern of racketeering activity, as that
11:49AM 8 term is defined in Title 18, United States Code, Section 1961,
11:49AM 9 subparagraph 1 and subparagraph i.

11:50AM 10 The evidence would show that the racketeering activity
11:50AM 11 to which Mr. Miller and others agreed to included acts
11:50AM 12 involving murder, kidnapping, acts related to the use of
11:50AM 13 interstate commerce facilities in the commission of murder for
11:50AM 14 hire plots, offenses involving the felonious trafficking of
11:50AM 15 controlled substances, specifically cocaine, and acts relating
11:50AM 16 to obstruction of justice as alleged in the information.

11:50AM 17 The evidence would show that beginning in or about the
11:50AM 18 spring of 2016, Mr. Miller and others agreed to assist Michael
11:50AM 19 J. Miske, Jr. with carrying out the kidnapping and murder of
11:50AM 20 Johnathan Fraser. Although Miller hoped that Miske would
11:50AM 21 eventually would change his mind and not carry through with his
11:50AM 22 intention to kidnap and murder Fraser, Miller nonetheless
11:50AM 23 agreed to assist Miske in developing a plan and understood that
11:50AM 24 Miske indeed intended to carry out that plan.

11:51AM 25 Mr. Miller did not directly participate in carrying

11:51AM 1 out the kidnapping or murder, but he assisted in other ways
11:51AM 2 including by helping Miske with the planning of the kidnapping
11:51AM 3 and murder and purchasing items that Miske intended to use to
11:51AM 4 carry out the kidnapping and murder.

11:51AM 5 The evidence would show in this case that Johnathan
11:51AM 6 Fraser was kidnapped and murdered on or about July 30, 2016.
11:51AM 7 In the fall of 2018, at a time when the United States did not
11:51AM 8 have sufficient evidence to charge Mr. Miller for his role in
11:51AM 9 this murder, Mr. Miller disclosed to the United States in
11:51AM 10 proffer protected statements that he had in fact played a role
11:51AM 11 in the 2016 kidnapping and murder of Mr. Fraser. As part of
11:51AM 12 this guilty plea, Mr. Miller has agreed to acknowledge these
11:51AM 13 facts that he previously disclosed in proffer protected
11:51AM 14 statements.

11:51AM 15 Also in the fall of 2018, again at a time when the
11:51AM 16 United States did not have sufficient evidence to charge him
11:52AM 17 for his role in these offenses, Mr. Miller disclosed to the
11:52AM 18 United States in proffer protected statements that between in
11:52AM 19 or about 2015 and in or about 2016, Michael J. Miske, Jr. had
11:52AM 20 instructed Miller to arrange for other individuals to be
11:52AM 21 assaulted and even murdered. In addition to Johnathan Fraser,
11:52AM 22 as I discussed previously, Miske instructed Mr. Miller to
11:52AM 23 arrange for five other individuals to be murdered. Although
11:52AM 24 Miller agreed to assist Mr. Miske, none of these individuals
11:52AM 25 were ultimately killed.

11:52AM 1 As part of his guilty plea, Mr. Miller has agreed to
11:52AM 2 acknowledge these facts that he previously admitted in proffer
11:52AM 3 protected statements. The evidence would show that in or about
11:52AM 4 October of 2016 Mr. Miller agreed to kidnap an accountant on
11:52AM 5 Mr. Miske's behalf. Mr. Miller and another individual did in
11:52AM 6 fact kidnap the accountant in Honolulu, held him for several
11:53AM 7 hours, but ultimately released him.

11:53AM 8 THE COURT: Did you mean, Mr. Inciong -- Mr. Inciong,
11:53AM 9 I'm sorry to interrupt you, did you mean with respect to the
11:53AM 10 accountant that the date at issue was October 2017?

11:53AM 11 MR. INCIONG: I'm sorry if I said something different.
11:53AM 12 I meant October 2017. Yes, thank you. In that particular
11:53AM 13 incident, the October 2017 kidnapping, that is an example, Your
11:53AM 14 Honor, where interstate commerce was affected as the vehicle
11:53AM 15 that Mr. Miller and the other individual used to kidnap and
11:53AM 16 hold the accountant was a vehicle that was manufactured outside
11:53AM 17 the State of Hawaii and shipped to Hawaii, thus affecting
11:53AM 18 interstate commerce.

11:53AM 19 The evidence would also show that from at least in or
11:53AM 20 about 2014 until in or about 2018, Mr. Miller distributed
11:54AM 21 controlled substances, including methamphetamine as well as
11:54AM 22 cocaine. Specifically in or about 2014, Mr. Miller and another
11:54AM 23 of Mr. Miske's associates, that would be specifically
11:54AM 24 coconspirator Michael J. Buntambah, attempted to arrange an
11:54AM 25 approximately \$400,000 cocaine transaction on Mr. Miske's

11:54AM 1 behalf, but both Mr. Miller and Buntenbah were arrested in
11:54AM 2 California before they could arrange for the cocaine to be
11:54AM 3 transported to Hawaii.

11:54AM 4 The evidence would further show that in or about 2016
11:54AM 5 Mr. Miske instructed an employee of one of his companies to
11:54AM 6 create fraudulent pay stubs for Mr. Miller so that Mr. Miller
11:54AM 7 could submit them to his probation office under the guise that
11:54AM 8 he was legitimately employed. Mr. Miller did in fact receive
11:54AM 9 these fraudulent pay stubs and submitted them to his probation
11:55AM 10 officer.

11:55AM 11 That, Your Honor, is a summary of the evidence that
11:55AM 12 the United States would present at trial to show Mr. Miller is
11:55AM 13 in fact guilty of conspiring to violate the racketeering laws
11:55AM 14 of the United States.

11:55AM 15 THE COURT: Mr. Miller, do you understand the evidence
11:55AM 16 that the government would offer in this case if it were to
11:55AM 17 proceed to trial?

11:55AM 18 THE DEFENDANT: Yes, Your Honor.

11:55AM 19 THE COURT: And do you agree, sir, that what the
11:55AM 20 government said you did is true?

11:55AM 21 THE DEFENDANT: Yes, Your Honor.

11:55AM 22 THE COURT: Mr. Miller, in your own words, please
11:55AM 23 describe what you did that makes you guilty of Count 1.

11:55AM 24 THE DEFENDANT: I was employed by Miske, transported
11:55AM 25 cocaine, transported money, provided firearms, kidnapping,

11:55AM 1 planning murders -- I did a lot.

11:56AM 2 THE COURT: I'm sorry, I did not want to interrupt
11:56AM 3 you. Did that complete your statement?

11:56AM 4 THE DEFENDANT: Yes, Your Honor.

11:56AM 5 THE COURT: And these activities that you just
11:56AM 6 described, among other things, kidnapping, you said firearms,
11:56AM 7 controlled substances including cocaine, and planning murders,
11:56AM 8 those were all activities that you engaged in since roughly
11:56AM 9 2014 until the present or until at least the time you were
11:56AM 10 arrested in 2018; is that fair?

11:56AM 11 THE DEFENDANT: Yes, Your Honor.

11:56AM 12 THE COURT: And you did all of these things as a
11:56AM 13 member of what the government has referred to as the Miske
11:56AM 14 Enterprise; is that also fair?

11:56AM 15 THE DEFENDANT: Yes, Your Honor.

11:56AM 16 THE COURT: And you were a member, is that true,
11:56AM 17 Mr. Miller, of a group of individuals who, for lack of a better
11:56AM 18 term, did the bidding on behalf of Mr. Miske?

11:56AM 19 THE DEFENDANT: Yes, Your Honor.

11:57AM 20 THE COURT: Is it fair to say that he was the leader
11:57AM 21 of this group of individuals?

11:57AM 22 THE DEFENDANT: Yes, Your Honor.

11:57AM 23 THE COURT: And he -- I'm sorry, it's unclear, but
11:57AM 24 "he" being Michael Miske, Jr.; is that fair?

11:57AM 25 THE DEFENDANT: Yes, Your Honor.

11:57AM 1 THE COURT: And Mr. Miske, Jr. was the individual who
11:57AM 2 directed the enterprise and gave you instructions on what to
11:57AM 3 do?

11:57AM 4 THE DEFENDANT: Yes, Your Honor.

11:57AM 5 THE COURT: And you were not the only individual I
11:57AM 6 gather who assisted Mr. Miske in that way; is that fair?

11:57AM 7 THE DEFENDANT: No, Your Honor.

11:57AM 8 THE COURT: All right. So you had an agreement not
11:57AM 9 only with him but with others as well?

11:57AM 10 THE DEFENDANT: Yes, Your Honor.

11:57AM 11 THE COURT: And what was the objective of the acts
11:57AM 12 that you performed and did on behalf of Mr. Miske? Was it
11:57AM 13 personal, in other words, was it financial? What were the
11:57AM 14 goals that Mr. Miske, if you had any understanding of it, hoped
11:57AM 15 to accomplish?

11:57AM 16 THE DEFENDANT: Some were personal, some were
11:58AM 17 financial.

11:58AM 18 THE COURT: Okay. So, for example, the cocaine that
11:58AM 19 Mr. Inciong mentioned, it sounds like that you and
11:58AM 20 Mr. Buntenbah, one of the defendants charged elsewhere, went to
11:58AM 21 California; is that fair?

11:58AM 22 THE DEFENDANT: Yes, Your Honor.

11:58AM 23 THE COURT: And that occurred in or about 2014?

11:58AM 24 THE DEFENDANT: Yes, Your Honor.

11:58AM 25 THE COURT: And did you and Mr. Buntenbah go to

11:58AM 1 California to purchase a large amount of cocaine at the
11:58AM 2 direction of Mr. Miske?

11:58AM 3 THE DEFENDANT: I did under the direction of him.

11:58AM 4 THE COURT: You did it because Mr. Miske asked you to?

11:58AM 5 THE DEFENDANT: Yes, Your Honor.

11:58AM 6 THE COURT: But you're not sure about Mr. Buntambah;
11:58AM 7 is that what you're saying?

11:58AM 8 THE DEFENDANT: Yes, Your Honor.

11:58AM 9 THE COURT: Okay, that's fair. That's fair. Because
11:58AM 10 you may not know what, if anything, Mr. Miske said or did or
11:59AM 11 directed Mr. Buntambah to do or not, so I appreciate that. And
11:59AM 12 your understanding is that Mr. Miske asked you to travel to
11:59AM 13 California in 2014 to purchase about \$400,000 worth of cocaine;
11:59AM 14 is that what you did?

11:59AM 15 THE DEFENDANT: Yes, Your Honor.

11:59AM 16 THE COURT: And the intent I gather was to bring back
11:59AM 17 that amount of cocaine to Honolulu to distribute to others here
11:59AM 18 in Hawaii; is that fair?

11:59AM 19 THE DEFENDANT: Yes, Your Honor.

11:59AM 20 THE COURT: To make money, is that the gist of it?

11:59AM 21 THE DEFENDANT: Yes, Your Honor.

11:59AM 22 THE COURT: And that money would have been made on
11:59AM 23 behalf of the Miske Enterprise if it had been successful?

11:59AM 24 THE DEFENDANT: Yes, Your Honor.

11:59AM 25 THE COURT: But in fact what happened was that you and

11:59AM 1 Mr. Buntambah, if I'm understanding it correctly from
11:59AM 2 Mr. Inciong's statement, were arrested in California before you
11:59AM 3 could bring that amount of cocaine back to Hawaii in 2014?
11:59AM 4 THE DEFENDANT: Yes, Your Honor.
11:59AM 5 THE COURT: So that's an example of a situation where
12:00PM 6 you were operating to improve or to develop financial gain for
12:00PM 7 the enterprise; is that fair?
12:00PM 8 THE DEFENDANT: Yes, Your Honor.
12:00PM 9 THE COURT: Now, one of the first things -- I think
12:00PM 10 one of the first specific acts that Mr. Inciong described was
12:00PM 11 your involvement with a person named Johnathan Fraser; do you
12:00PM 12 recall that?
12:00PM 13 THE DEFENDANT: Yes, Your Honor.
12:00PM 14 THE COURT: Is that an example, as far as you
12:00PM 15 understand it, Mr. Miller, of you acting on behalf of Mr. Miske
12:00PM 16 for personal reasons?
12:00PM 17 THE DEFENDANT: Yes, Your Honor.
12:00PM 18 THE COURT: What specifically did Mr. Miske ask you to
12:00PM 19 do with regard to Mr. Fraser?
12:00PM 20 THE DEFENDANT: Just to find out where he was, to get
12:00PM 21 firearms to help him with the planning.
12:00PM 22 THE COURT: And what did Mr. Miske tell you he wanted
12:00PM 23 to do to Mr. Fraser, if anything?
12:01PM 24 THE DEFENDANT: He wanted to kill him.
12:01PM 25 THE COURT: And do you have an understanding of why he

12:01PM 1 wanted Mr. Fraser dead?

12:01PM 2 THE DEFENDANT: Because he was in an accident with his
12:01PM 3 son.

12:01PM 4 THE COURT: Because Mr. Fraser was in a car accident
12:01PM 5 with Mr. Miske's son?

12:01PM 6 THE DEFENDANT: Yes, Your Honor.

12:01PM 7 THE COURT: And Mr. Miske I gather felt that
12:01PM 8 Mr. Fraser had some responsibility for his son's death in that
12:01PM 9 accident?

12:01PM 10 THE DEFENDANT: Yeah, he told me that.

12:01PM 11 THE COURT: He told you that? Mr. Miller, I'm sorry,
12:01PM 12 I'm having a little bit of trouble hearing you, so I apologize
12:01PM 13 if I'm being a little bit repetitive. Is that what Mr. Miske
12:01PM 14 told you that Mr. Miske felt that Mr. Fraser was in some way
12:01PM 15 responsible for Mr. Miske's son's death and that's why he
12:01PM 16 wanted retribution?

12:01PM 17 THE DEFENDANT: Yes, Your Honor.

12:01PM 18 THE COURT: And so did you in fact obtain a firearm or
12:01PM 19 firearms for Mr. Miske to use in the murder of Mr. Fraser?

12:02PM 20 THE DEFENDANT: If it was a specific one that he used,
12:02PM 21 but I obtained firearms for him, yes.

12:02PM 22 THE COURT: What else did you do to help Mr. Miske
12:02PM 23 with the planning, I think is what you said, for Mr. Fraser's
12:02PM 24 murder?

12:02PM 25 THE DEFENDANT: I got locations for him, I found

12:02PM 1 people that were willing to help him, I got vehicles for him, I
12:02PM 2 got supplies for him.

12:02PM 3 THE COURT: So you recruited others to actually do the
12:02PM 4 bidding, do the murder?

12:02PM 5 THE DEFENDANT: Yes, Your Honor.

12:02PM 6 THE COURT: And my understanding is you yourself were
12:02PM 7 not one of those individuals? In other words, you did not
12:02PM 8 participate in the murder itself?

12:02PM 9 THE DEFENDANT: No, Your Honor.

12:02PM 10 THE COURT: Were you present?

12:02PM 11 THE DEFENDANT: No, Your Honor.

12:02PM 12 THE COURT: Do you know how that was accomplished?

12:03PM 13 THE DEFENDANT: No, Your Honor.

12:03PM 14 THE COURT: Now, in your plea agreement you mentioned
12:03PM 15 that Mr. Miske also asked you to help him arrange for five
12:03PM 16 other individuals to be murdered, and that's a direct quote.
12:03PM 17 So these are five individuals, aside from Mr. Fraser. Do you
12:03PM 18 remember that statement in your plea agreement?

12:03PM 19 THE DEFENDANT: Yes, Your Honor.

12:03PM 20 THE COURT: And so what did you do to help Mr. Miske
12:03PM 21 in that regard?

12:03PM 22 THE DEFENDANT: I put trackers on them, I found out
12:03PM 23 where they lived, cars they drove, paid people money, just --

12:04PM 24 THE COURT: When you say "paid people money," paid
12:04PM 25 people money to carry out the actual murder of those five

12:04PM 1 others?

12:04PM 2 THE DEFENDANT: Yes, Your Honor.

12:04PM 3 THE COURT: And when you say "put trackers," are you
12:04PM 4 talking about GPS devices?

12:04PM 5 THE DEFENDANT: Yes, Your Honor.

12:04PM 6 THE COURT: You placed them on these five other
12:04PM 7 individuals -- the vehicles that they owned or drove?

12:04PM 8 THE DEFENDANT: Maybe not theirs, somebody they know.

12:04PM 9 THE COURT: Okay, but vehicles that they used; is that
12:04PM 10 fair?

12:04PM 11 THE DEFENDANT: Yes, Your Honor.

12:04PM 12 THE COURT: And the goal of that was to be able to
12:04PM 13 know where they were so that when the time came you could find
12:04PM 14 them?

12:04PM 15 THE DEFENDANT: Yes, Your Honor.

12:04PM 16 THE COURT: And what specifically did Mr. Miske ask
12:04PM 17 you to do with regard to these five other individuals,
12:04PM 18 Mr. Miller?

12:04PM 19 THE DEFENDANT: He wanted --

12:04PM 20 THE COURT: Say that again?

12:04PM 21 THE DEFENDANT: He wanted them dead or hurt or however
12:04PM 22 he was feeling that day.

12:04PM 23 THE COURT: And he just simply asked you for
12:05PM 24 assistance?

12:05PM 25 THE DEFENDANT: Yes, Your Honor.

12:05PM 1 THE COURT: And were you paid for any of this
12:05PM 2 assistance that you provided to Mr. Miske for these -- either
12:05PM 3 these five individuals or for Mr. Fraser, were you compensated
12:05PM 4 in some way?

12:05PM 5 THE DEFENDANT: Sometimes, yes.

12:05PM 6 THE COURT: And in what fashion? Was it with drugs,
12:05PM 7 with cash, with both, or some other way?

12:05PM 8 THE DEFENDANT: Cash or a favor.

12:05PM 9 THE COURT: In cash?

12:05PM 10 THE DEFENDANT: Yes, Your Honor.

12:05PM 11 THE COURT: If I understand your plea agreement
12:05PM 12 correctly, these five other individuals, aside from Mr. Fraser,
12:05PM 13 no harm actually came to any one of them; is that true?

12:05PM 14 THE DEFENDANT: No, Your Honor.

12:05PM 15 THE COURT: Why not, if you know?

12:05PM 16 THE DEFENDANT: Never went through with them.

12:06PM 17 THE COURT: Did Mr. Miske change his mind or -- was
12:06PM 18 there some other reason why these individuals were not killed?

12:06PM 19 THE DEFENDANT: He probably changed his mind.

12:06PM 20 THE COURT: You think he changed his mind?

12:06PM 21 THE DEFENDANT: I'm sure.

12:06PM 22 THE COURT: I'm sorry, Mr. Miller, I did not catch
12:06PM 23 that. Did you say that Mr. Miske changed his mind?

12:06PM 24 THE DEFENDANT: He could have.

12:06PM 25 THE COURT: Can you give me that answer one more time?

12:06PM 1 I apologize, I did not hear you. Mr. Miller, can you hear me?

12:06PM 2 THE DEFENDANT: Yes, Your Honor.

12:06PM 3 THE COURT: I was asking with regard to these five

12:07PM 4 individuals, do you know why they were ultimately not harmed or

12:07PM 5 not killed?

12:07PM 6 THE DEFENDANT: No, I don't know.

12:07PM 7 THE COURT: You don't know?

12:07PM 8 THE DEFENDANT: He could have changed his mind.

12:07PM 9 THE COURT: But are you not certain? It sounds like

12:07PM 10 you're not sure why.

12:07PM 11 THE DEFENDANT: Yeah, I'm not sure.

12:07PM 12 THE COURT: And that's fair. If you don't know

12:07PM 13 something, just tell me that -- tell me that you don't know.

12:07PM 14 Tell me about this accountant that you kidnapped on Mr. Miske's

12:07PM 15 behalf, according to your plea agreement, in October of 2017.

12:07PM 16 Where did that kidnapping occur?

12:07PM 17 THE DEFENDANT: In Honolulu.

12:07PM 18 THE COURT: Do you know the name of that accountant?

12:07PM 19 THE DEFENDANT: No, Your Honor.

12:07PM 20 THE COURT: Did Mr. Miske tell you why he wanted that

12:07PM 21 person kidnapped?

12:07PM 22 THE DEFENDANT: He told me that the guy owed someone

12:07PM 23 that he knew some money.

12:07PM 24 THE COURT: Okay. And wasn't paying it and that was

12:07PM 25 the goal, to get him to pay?

12:08PM 1 THE DEFENDANT: Yes, Your Honor.

12:08PM 2 THE COURT: And there was another individual that
12:08PM 3 assisted you in that kidnapping; is that correct?

12:08PM 4 THE DEFENDANT: Yes, Your Honor.

12:08PM 5 THE COURT: And did you in fact carry out that
12:08PM 6 kidnapping?

12:08PM 7 THE DEFENDANT: Yes, Your Honor.

12:08PM 8 THE COURT: And did any harm, at least long-term harm
12:08PM 9 come to that individual as a result of this incident?

12:08PM 10 THE DEFENDANT: Yes, Your Honor.

12:08PM 11 THE COURT: How was he harmed?

12:08PM 12 THE DEFENDANT: He was assaulted.

12:08PM 13 THE COURT: Assaulted, meaning he was hit, punched?

12:08PM 14 THE DEFENDANT: Yes.

12:08PM 15 THE COURT: Hit?

12:08PM 16 THE DEFENDANT: No.

12:08PM 17 THE COURT: Punched. And did you do that or did the
12:08PM 18 other individual helping you do that or both of you?

12:08PM 19 THE DEFENDANT: Both.

12:08PM 20 THE COURT: Okay. And did that individual -- were you
12:08PM 21 successful, Mr. Miller, in getting that individual to pay the
12:08PM 22 money that was owed to Mr. Miske's colleague?

12:08PM 23 THE DEFENDANT: No, Your Honor.

12:08PM 24 THE COURT: Were you paid by Mr. Miske for that work?

12:09PM 25 THE DEFENDANT: No, Your Honor.

12:09PM 1 THE COURT: I want to back up just a second. The five
12:09PM 2 individuals, other than Mr. Fraser, that you helped Miske plan
12:09PM 3 the murder of, did Mr. Miske tell you why he wanted those five
12:09PM 4 individuals or any of the five individuals dead? Did he tell
12:09PM 5 you why?

12:09PM 6 THE DEFENDANT: Old grudges.

12:09PM 7 THE COURT: Personal grudges?

12:09PM 8 THE DEFENDANT: Yes, Your Honor.

12:09PM 9 THE COURT: Now, in 2016 your plea agreement mentions
12:09PM 10 Mr. Miske helping you create some fraudulent pay stubs. Do you
12:09PM 11 remember that?

12:09PM 12 THE DEFENDANT: Yes, Your Honor.

12:09PM 13 THE COURT: And so my understanding, reading between
12:09PM 14 the lines, is that you were on probation at the time?

12:09PM 15 THE DEFENDANT: Yes, Your Honor.

12:09PM 16 THE COURT: And part of your probation required you to
12:09PM 17 either be looking for work or to be employed; is that fair?

12:10PM 18 THE DEFENDANT: Yes, Your Honor.

12:10PM 19 THE COURT: And so Mr. Miske was creating these pay
12:10PM 20 stubs for you in order to allow you to provide those pay stubs
12:10PM 21 to your probation officer to show that you were working?

12:10PM 22 THE DEFENDANT: Yes, Your Honor.

12:10PM 23 THE COURT: And did you in fact provide those pay
12:10PM 24 stubs to your probation officer for that reason?

12:10PM 25 THE DEFENDANT: Yes, Your Honor.

12:10PM 1 THE COURT: Was he or she convinced?

12:10PM 2 THE DEFENDANT: Yes, Your Honor.

12:10PM 3 THE COURT: And were you in fact working for Mr. Miske
12:10PM 4 at the time as your pay stubs indicated or not?

12:10PM 5 THE DEFENDANT: No, Your Honor.

12:10PM 6 THE COURT: The point of that is Mr. Miske was helping
12:10PM 7 you in that regard so that you can stay out of being sent back
12:10PM 8 to jail?

12:10PM 9 THE DEFENDANT: Yes, Your Honor.

12:10PM 10 THE COURT: And if you avoided being sent back to jail
12:10PM 11 then he would have you available to help him with the other
12:10PM 12 acts of racketeering that we have been talking about; is that
12:10PM 13 fair?

12:10PM 14 THE DEFENDANT: Yes, Your Honor.

12:10PM 15 THE COURT: Mr. Inciong, I just had one quick
12:11PM 16 question. Is the government planning on providing these
12:11PM 17 proffer protected statements that are mentioned several times
12:11PM 18 in paragraph 8 of the plea agreement to the Court?

12:11PM 19 MR. INCIONG: We are happy to do so if the Court would
12:11PM 20 like that, Your Honor.

12:11PM 21 THE COURT: I would appreciate it.

12:11PM 22 MR. INCIONG: That's not a problem.

12:11PM 23 THE COURT: All right. So with that, let me just go
12:11PM 24 over my notes just real quick. So with that, I'll ask both
12:11PM 25 counsel, Mr. Mizono and Mr. Inciong, are you satisfied that a

12:11PM 1 factual basis for Mr. Miller's plea of guilty to Count 1 of the
12:11PM 2 information has been established?

12:12PM 3 MR. INCIONG: The United States is satisfied, Your
12:12PM 4 Honor.

12:12PM 5 MR. MIZONO: On behalf of Mr. Miller, I'm satisfied,
12:12PM 6 Your Honor.

12:12PM 7 THE COURT: Mr. Miller, I'll turn to you, sir. As to
12:12PM 8 Count 1 of the information, how do you plead: guilty or not
12:12PM 9 guilty?

12:12PM 10 THE DEFENDANT: Guilty.

12:12PM 11 THE COURT: The Court finds that the defendant,
12:12PM 12 Mr. Miller, understands the nature of this morning's
12:12PM 13 proceedings and is competent to waive indictment and proceed by
12:12PM 14 information as well as to enter a knowing and informed plea.

12:12PM 15 The Court further finds that Mr. Miller has in fact
12:12PM 16 waived indictment and consented to proceed by information, he
12:12PM 17 has done so both by executing the single page waiver of
12:12PM 18 indictment form that the Court and Mr. Mizono had
12:12PM 19 countersigned, and he has also indicated that waiver through
12:12PM 20 executing his plea agreement which references that occurrence,
12:12PM 21 that waiver.

12:12PM 22 The Court further finds that Mr. Miller has entered
12:12PM 23 this morning a knowing, informed, and voluntary plea of guilty
12:13PM 24 of Count 1 of the information and that he has done so without
12:13PM 25 coercion, force, or threat. The Court finds that Mr. Miller's

12:13PM 1 plea of guilty is supported by an independent basis in fact
12:13PM 2 containing each of the essential elements of the single offense
12:13PM 3 to which he is pleading, that is 18 U.S.C., Section 1962
12:13PM 4 charge, and that Mr. Miller understands both the trial and the
12:13PM 5 civil rights that he would have in the absence of pleading
12:13PM 6 guilty but knowingly and voluntarily elects to waive those
12:13PM 7 rights. The Court further finds that in pleading guilty,
12:13PM 8 Mr. Miller understands the factors that the Court will consider
12:13PM 9 at the time of sentencing, including the potential penalties
12:13PM 10 that apply to a violation of Count 1.

12:13PM 11 Mr. Miller, as you have acknowledged that you in fact
12:13PM 12 are guilty, I accept your guilty plea and adjudge you guilty as
12:13PM 13 charged to Count 1 of the information. The Court orders the
12:13PM 14 plea agreement in this case to be filed but reserves a
12:13PM 15 determination of whether to accept it until after a presentence
12:13PM 16 investigation and investigation report have both been prepared.

12:13PM 17 May we get a sentencing date, please?

12:13PM 18 THE CLERK: March 25, 2021 at 9:30 with Judge Watson.

12:14PM 19 THE COURT: Is that date and time acceptable with both
12:14PM 20 counsel?

12:14PM 21 MR. INCIONG: Yes, that's fine with the government.

12:14PM 22 MR. MIZONO: Your Honor, thank you.

12:14PM 23 THE COURT: Anything else that I can assist the
12:14PM 24 parties with this morning in this matter?

12:14PM 25 MR. INCIONG: No. Thank you, Your Honor.

12:14PM 1 MR. MIZONO: Thank you.

12:14PM 2 THE COURT: We will hopefully see everyone in person
12:14PM 3 next time in late March for sentencing. We are going to take
12:14PM 4 our leave now, Mr. Miller. Thank you very much for
12:14PM 5 participating, and we will see you in a few months.

12:14PM 6 THE DEFENDANT: Thank you, Your Honor.

12:14PM 7 THE COURT: We are in recess.

12:14PM 8 (Proceedings were concluded at 12:14 p.m.)

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 COURT REPORTER'S CERTIFICATE

2 I, Gloria T. Bediamol, Official Court Reporter, United
3 States District Court, District of Hawaii, do hereby certify
4 that pursuant to 28 U.S.C. §753 the foregoing is a complete,
5 true, and correct transcript from the stenographically reported
6 proceedings held in the above-entitled matter and that the
7 transcript page format is in conformance with the regulations
8 of the Judicial Conference of the United States.

9

10 DATED at Honolulu, Hawaii, April 11, 2023.

11

12

13 /s/ Gloria T. Bediamol

14 GLORIA T. BEDIAMOL.

15 RMR, CRR, FCRR

16

17

18

19

20

21

22

23

24

25